

1 GREENBERG TRAURIG, LLP
2 JEFF E. SCOTT (SBN 126308)
3 *ScottJ@gtlaw.com*
4 JORDAN D. GROTZINGER (SBN 190166)
5 *GrotzingerJ@gtlaw.com*
6 1840 Century Park East, Suite 1900
Los Angeles, CA 90067-2121
Tel: 310-586-7700
Fax: 310-586-7800

7 Attorneys for Plaintiff
8 CARROL BOYES (PTY) LIMITED

9
10 **UNITED STATES DISTRICT COURT**
11 **CENTRAL DISTRICT OF CALIFORNIA**
12 **SOUTHERN DIVISION**

13 CARROL BOYES (PTY) LIMITED, a
14 South African company,

15 Plaintiff,

16 vs.

17 CARROL BOYES US DISTRIBUTION,
18 INC., a California corporation; BARRY
19 SENDER, an individual; and UTi,
20 UNITED STATES, INC., a New York
corporation,

21 Defendants.

CASE NO. 8:15-cv-00312

COMPLAINT FOR:

- (1) **BREACH OF CONTRACT;**
(2) **COMMON COUNTS;**
(3) **CLAIM AND DELIVERY;**
(4) **CONVERSION;**
(5) **CONVERSION;**
(6) **INTENTIONAL**
INTERFERENCE WITH
PROSPECTIVE ECONOMIC
ADVANTAGE

DEMAND FOR JURY TRIAL

INTRODUCTION

1. Plaintiff Carrol Boyes (Pty) Limited (“Carrol Boyes” or “Plaintiff”) is a South African designer of luxury home furnishings and other lifestyle products. Its iconic brand has obtained worldwide recognition for quality and style.

2. In an attempt to increase sales and market its brand in the United States, where it owned and operated a retail store in New York and has sold products over its website, in June 2012, Carrol Boyes entered into an Exclusive Wholesale Licensing, Supply, Sales & Distribution Agreement (“Agreement”) with an entity formed by Defendant Barry Sender (“Sender”), which he named Carrol Boyes US Distribution, Inc. (“CBUSD”). CBUSD, acting through Sender, licensed the name Carrol Boyes and agreed to distribute Carrol Boyes’ products in the United States according to the terms set forth in the Agreement. Generally, the Agreement provided for Carrol Boyes to fulfill agreed sales made in CBUSD’s territory, that CBUSD would deposit proceeds of customer sales in Carrol Boyes’ designated bank account, and that Carrol Boyes would then pay CBUSD an agreed percentage of the amounts deposited into Carrol Boyes’ bank account generated from such sales.

3. CBUSD breached the Agreement in several material respects, including by taking customer payments owed to Carrol Boyes, diverting them to its own bank accounts, paying itself unauthorized amounts from the converted funds and generally ignoring the collection and payment protocol clearly set forth in the Agreement. Also, despite repeated requests, CBUSD failed to account for and pay to Carrol Boyes hundreds of thousands of dollars generated from sales it made of Carrol Boyes products.

4. CBUSD also fell far short of meeting the \$500,000 Annual Minimum Sales Amount set forth in the Agreement, thereby allowing Carrol Boyes to terminate the Agreement for that independent reason. Pursuant to Section 4.2(c) of the Agreement, Carrol Boyes terminated the Agreement effective as of February 17, 2015. However, CBUSD has refused to release approximately \$100,000 worth of Carrol Boyes’ inventory that is being stored by CBUSD at a warehouse owned by Defendant UTi, United States,

1 Inc. (“UTi”), instead instructing UTi that CBUSD owns or has some claim to the
2 inventory and that UTi should not release it to Carrol Boyes. In doing so, CBUSD and
3 UTi have ignored the express language in Section 1.5 of the Agreement, confirming that
4 title to all goods remains with Carrol Boyes until it passes to the customer as part of a
5 purchase transaction.

6 5. Accordingly, Carrol Boyes brings this action for breach of contract,
7 conversion, claim and delivery and related claims.

8 **JURISDICTION AND VENUE**

9 6. This Court has subject matter jurisdiction over this action pursuant to 28
10 U.S.C. § 1332(a)(2). Carrol Boyes is a citizen and subject of South Africa, as a private
11 company, Carrol Boyes (Pty) Limited (Registration number 2007/008786/07), formed
12 under the laws of South Africa, where it has its principal place of business. On
13 information and belief, CBUSD is a citizen of California, as a corporation formed under
14 California law with its principal place of business in Orange County, California. On
15 information and belief, Sender is an individual domiciled in Orange County, California
16 and, as such, is a citizen of California. UTi is a citizen of New York and California, as a
17 corporation formed under the laws of New York, and Plaintiff is informed and believes
18 that UTi’s principal place of business is in Long Beach, California. The amount in
19 controversy exceeds \$75,000, exclusive of interests and costs.

20 7. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b)(2) because a
21 substantial part of the events or omissions giving rise to this action have occurred and/or
22 will occur in this District, and a substantial part of property that is a subject of the action
23 is situated in this District.

24 **FACTUAL ALLEGATIONS**

25 **The Distribution Agreement**

26 8. Carrol Boyes was created by a prominent South African designer of the
27 same name, and is a luxury brand of home and lifestyle items. Its products are available
28

1 in over 30 countries and are available for sale at high-end retail establishments and
2 through online fulfillment services.

3 9. In 2012, Carrol Boyes was looking for a U.S. distributor to help expand the
4 brand in America. Effective as of June 21, 2012, Carrol Boyes and CBUSD entered into
5 the Agreement for this purpose. The Agreement states that it is governed by California
6 law.

7 10. The Agreement set forth a specific mechanism by which wholesale
8 purchasers with whom CBUSD would deal would make payments to Carrol Boyes, after
9 which Carrol Boyes would pay a percentage of such funds to CBUSD:

10 “CBUSD and CARROL BOYES hereby agree that CBUSD may issue
11 invoices to Wholesale Market Purchasers on behalf of CARROL BOYES (or its
12 subsidiary). Invoices may state that the CB Products are distributed by CBUSD;
13 *provided, however, all invoices shall instruct the Wholesale Market Purchaser to*
14 *make payments payable to CARROL BOYES* (or its subsidiary). CARROL
15 BOYES shall be liable for payment of twenty-five percent (25%) of the Wholesale
16 Price for any CB Products delivered to a Wholesale Market Purchaser ... pursuant
17 to this Agreement.” (Agreement at ¶ 2.2(a), emphasis added.)

18 11. The following paragraph specified:

19 “To facilitate clarity regards payment in terms of 2.2(a) above, *CARROL*
20 *BOYES will establish a separate bank account*, to which CBUSD will have
21 enquiry access, *into which all customer payments will be deposited*. CARROL
22 BOYES shall pay CBUSD twenty-five percent (25%) of the customer payments
23 within seven (7) days. Any other payments due from one party to the other shall
24 be separately invoiced by one party and paid by the other party within seven (7)
25 days of receipt of invoice.” (Agreement at ¶ 2.2(b), emphasis added.)

26 12. The Agreement also provided that CBUSD would arrange for warehousing,
27 and that Carrol Boyes would retain ownership of Carrol Boyes products until they are
28 delivered to purchasers:

1 “Notwithstanding delivery to CBUSD, the CBUSD Warehouse or any other
 2 person, title to CB Products shall remain in CARROL BOYES until passing
 3 directly from CARROL BOYES to the persons receiving Products from CBUSD
 4 as part of a purchase transaction (hereinafter, the ‘Purchasers’).” (Agreement at ¶
 5 1.5.)

6 13. Pursuant to the Agreement, CBUSD contracted with UTi to provide
 7 warehousing services.

8 14. The Agreement’s termination provisions allowed for termination upon a
 9 material breach and notice, and independently upon CBUSD’s failure to reach \$500,000
 10 of gross sales:

11 “(a) This Agreement may be terminated by either party for a material breach by the
 12 other party of the provisions hereof. Such termination shall be effective ninety
 13 (90) days after written notice to the other party of the breach if the breach has not
 14 been remedied.

15 ...

16 (c) CARROL BOYES shall be entitled to terminate this Agreement should the
 17 aggregate gross sales to Wholesale Market Purchasers be less than US\$500,000 in
 18 a calendar year (the ‘Annual Minimum Sales Amount’), beginning with the 2014
 19 calendar year. ... CARROL BOYES must exercise its right to terminate within
 20 ninety (90) days after the end of calendar year in which CBUSD failed to meet the
 21 Annual Minimum Sales Amount.” (Agreement at ¶ 4.2(a), (c).)

22 **Defendants’ Misconduct**

23 15. As quoted above, the Agreement required CBUSD to instruct Wholesale
 24 Market Purchasers as defined in the Agreement to make all checks payable to Carrol
 25 Boyes, and required CBUSD to deposit all payments into Carrol Boyes’ “separate bank
 26 account.” Subsequently, Carrol Boyes would pay to CBUSD 25% of the Wholesale
 27 Price as set forth in the Agreement.

1 16. Defendant Sender caused CBUSD to breach the Agreement and, on
2 information and belief, committed bank fraud, in causing CBUSD to divert checks made
3 payable to Carrol Boyes to Defendant CBUSD. Instead of depositing checks payable to
4 Carrol Boyes into Carrol Boyes' separate account, as required by the Agreement, Sender
5 and CBUSD deposited these checks into CBUSD's account, apparently by causing the
6 banks to believe that CBUSD and Carrol Boyes were one and the same, due to the
7 companies' similar names. Thus, instead of awaiting its 25% payment from Carrol
8 Boyes as provided in the Agreement, Sender and CBUSD simply took all of Carrol
9 Boyes' money, and then paid to Carrol Boyes whatever balance Sender unilaterally
10 decided to pay to Carrol Boyes. He also has failed and refused to account for all
11 collections, diversions and payments.

12 17. For example, in one instance, Sender deposited funds payable to Carrol
13 Boyes into CBUSD's account, and then withheld from its payment to Carrol Boyes a
14 purported expense in the amount of \$61,245.02. Sender and CBUSD have refused to
15 repay the amounts they stole.

16 18. On or about May 6, 2014, Carrol Boyes gave CBUSD notice of this material
17 breach in a termination letter pursuant to the Agreement, and CBUSD never remedied the
18 breach within 90 days of the notice as required, or at all.

19 19. In addition, CBUSD failed to reach the \$500,000 sales threshold for the
20 calendar year 2014. Thus, on February 17, 2015, Carrol Boyes sent CBUSD a
21 termination letter on this independent ground. Pursuant to the Agreement, such
22 termination is automatic.

23 20. In its February 17, 2015 termination letter, Carrol Boyes demanded that
24 CBUSD direct UTi, which warehouses Carrol Boyes' products, to cooperate with Carrol
25 Boyes regarding the distribution of those products and related logistics. Carrol Boyes
26 also contacted UTi for the same purpose, and called its attention to the contractual
27 language expressly providing that Carrol Boyes owns the inventory in UTi's possession,
28 as quoted above. However, UTi informed Carrol Boyes that CBUSD disputed Carrol

1 Boyes' ownership rights to the inventory in UTi's possession and has refused to turn the
2 inventory over to Carrol Boyes or confirm its ownership interest.

3 21. In response, Carrol Boyes again provided UTi with the clear contractual
4 basis on which Carrol Boyes owns that inventory, and requested any information
5 suggesting how CBUSD could purport to challenge that ownership. UTi did not provide
6 any such information, and continues to wrongfully hold Carrol Boyes' inventory in its
7 possession. This inventory is worth approximately \$100,000.

8 22. Carrol Boyes is further informed and believes that Sender and CBUSD have
9 failed to account for and pay to Carrol Boyes hundreds of thousands of sales proceeds
10 due to Carrol Boyes pursuant to the Agreement. For example, on February 25, 2015, a
11 customer was contacted to confirm a balance owing to Carrol Boyes. The customer
12 advised that it already had made this payment, but the payment was never received by
13 Carrol Boyes.

14 **FIRST CLAIM FOR RELIEF**

15 (Breach of Contract, Against CBUSD)

16 23. Carrol Boyes incorporates by reference the allegations in paragraphs 1-22 as
17 though set forth in full herein.

18 24. The Agreement was and is a valid and existing contract (subject to the
19 termination of the parties' business relationship pursuant to its terms).

20 25. Carrol Boyes performed all covenants and conditions in the Agreement,
21 except to the extent such performance was excused.

22 26. CBUSD materially breached the Agreement as set forth above, including,
23 without limitation, the provisions at paragraphs 1.5, 2.2(a) and 2.2(b).

24 27. In addition, Carrol Boyes is informed and believes that CBUSD breached
25 the Agreement by failing to account for and pay hundreds of thousands of sales proceeds
26 due to Carrol Boyes pursuant to the Agreement and by asserting an ownership interest in
27 over \$100,000 in inventory at the UTi warehouse (in direct violation of the plain
28

1 language of the Agreement), causing UTi to refuse Carrol Boyes access to its own
2 property.

3 28. As a result, Carrol Boyes has suffered and will continue to suffer damages,
4 exceeding the Court's jurisdictional threshold and in an amount to be proven at trial.

5 **SECOND CLAIM FOR RELIEF**

6 (Common Counts, Against CBUSD)

7 29. Carrol Boyes incorporates by reference the allegations in paragraphs 1-28 as
8 though set forth in full herein.

9 30. CBUSD owes Carrol Boyes the sum certain of \$61,245.02, which is money
10 had and received by CBUSD for the use of Carrol Boyes.

11 31. Based on the foregoing, in addition to the other relief sought herein, Carrol
12 Boyes is entitled to recover this sum certain.

13 32. Carrol Boyes also is entitled to an attachment for this amount, because this
14 claim is based on an express contract, is for a fixed amount, and is an unsecured
15 commercial claim.

16 **THIRD CLAIM FOR RELIEF**

17 (Claim and Delivery, Against All Defendants)

18 33. Carrol Boyes incorporates by reference the allegations in paragraphs 1-32 as
19 though set forth in full herein.

20 34. Based on paragraph 1.5 of the Agreement, Carrol Boyes owns and has the
21 right to immediate possession of the inventory in UTi's possession, which is tangible
22 personal property.

23 35. Based on the facts asserted above, the inventory is being wrongfully
24 withheld by UTi, pursuant to Sender's and CBUSD's baseless contentions that they, and
25 not Carrol Boyes, own the property.

26 36. Due to Defendants' conduct, there exists immediate danger that the
27 inventory will be transferred, concealed and/or substantially impaired in value.
28 Moreover, Carrol Boyes is being deprived of its right to sell that inventory to customers.

1 37. Accordingly, Carrol Boyes is entitled to a writ of possession and temporary,
2 preliminary and permanent injunctive relief to prevent Defendants from transferring,
3 concealing, or otherwise impairing the value of, the inventory, pending seizure by a
4 levying officer and turnover of the property to Carrol Boyes.

5 38. In addition, based on the foregoing, Carrol Boyes is entitled to a
6 constructive trust over the inventory.

7 **FOURTH CLAIM FOR RELIEF**

8 (Conversion, Against All Defendants)

9 39. Carrol Boyes incorporates by reference the allegations in paragraphs 1-38 as
10 though set forth in full herein.

11 40. As set forth above, Carrol Boyes owns the inventory in UTi's possession.

12 41. Defendants have converted the inventory by their wrongful conduct alleged
13 herein. Specifically, Sender and CBUSD have wrongfully asserted some claim to the
14 inventory (without a legitimate basis), and in response and despite UTi's knowledge of
15 the contract provision granting sole ownership to Carrol Boyes, UTi refuses to turn over
16 the property.

17 42. As a result of Defendants' conduct, Carrol Boyes has suffered and will
18 continue to suffer damages, exceeding the Court's jurisdictional threshold and in an
19 amount to be proven at trial.

20 43. Moreover, Carrol Boyes is informed and believes that Defendants' conduct
21 alleged herein was willful, malicious, oppressive and/or fraudulent, and therefore Carrol
22 Boyes is entitled to punitive damages against these Defendants, to punish and make an
23 example of them.

24 44. In addition or alternatively, based on the foregoing, Carrol Boyes is entitled
25 to a writ of possession and temporary, preliminary and permanent injunctive relief to
26 prevent Defendants from transferring, concealing, or otherwise impairing the value of,
27 the inventory, pending seizure by a levying officer and turnover of the property to Carrol
28 Boyes, and is entitled to a constructive trust over the inventory.

FIFTH CLAIM FOR RELIEF

(Conversion, Against Sender and CBUSD)

45. Carrol Boyes incorporates by reference the allegations in paragraphs 1-44 as though set forth in full herein.

46. As set forth above, Carrol Boyes owns a specific fund in a sum certain, i.e., the \$61,245.02 that Sender and CBUSD wrongfully withheld from its payment to Carrol Boyes as purported expenses.

47. Sender and CBUSD have converted that fund by their wrongful conduct alleged herein.

48. As a result of their conduct, Carrol Boyes has suffered and will continue to suffer damages in the amount wrongfully withheld, plus all interest allowed by law.

49. Moreover, Carrol Boyes is informed and believes that Sender's and CBUSD's conduct alleged herein was willful, malicious, oppressive and/or fraudulent, and therefore Carrol Boyes is entitled to punitive damages against these Defendants, to punish and make an example of them.

SIXTH CLAIM FOR RELIEF

(Intentional Interference With Prospective Economic Advantage, Against All Defendants)

50. Carrol Boyes incorporates by reference the allegations in paragraphs 1-49 as though set forth in full herein.

51. Carrol Boyes has economic relationships with the wholesale purchasers who have ordered, or will order, the inventory in UTi's possession, which relationships carry the probability of future economic benefit to Carrol Boyes.

52. Carrol Boyes is informed and believes that Defendants have knowledge of these relationships.

53. Defendants have engaged in intentional acts, described above, designed to disrupt those relationships, and those relationships have actually been disrupted.

